IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN JOHNSON, Plaintiff,	)	
v.	)	Civil Action No. 90-1397
ROCKY MOUNTAIN HELICOPTERS, Defendant.	)	

R E P O R T

GARY L. LANCASTER,
United States Magistrate Judge

This is an action for wrongful discharge. At the time this action was filed, plaintiff was a resident of Allegheny County, Pennsylvania. Defendant is a Utah corporation with its principle place of business in Provo, Utah. Jurisdiction is predicated upon diversity of citizenship. Before the court is defendant's motion for summary judgment. For the reasons set forth herein, the motion should be granted.

I. BACKGROUND

The following material facts are undisputed.

The defendant owns and operates a nationwide helicopter service which provides transportation for patients to and from various hospitals. Plaintiff is a duly certified helicopter pilot. Plaintiff alleges that on July 22, 1981, he entered into an oral

contract of employment with defendant wherein he was to be provided continuous employment so long as he competently and faithfully performed the duties assigned to him. Since 1982, he was employed as a helicopter pilot at defendant's Life Flight operation based at Allegheny General Hospital, Pittsburgh, Pennsylvania.

On March 29, 1990, he received instructions to make a patient pickup at the Washington Pennsylvania Hospital. However, during the flight, an engine cowling fell from the helicopter and damaged the blades which created a hazardous condition for plaintiff and his passengers. The mission was aborted and the plaintiff returned to the home base at Allegheny General Hospital.

Plaintiff contends that the cowling fell as a result of the failure of a defective and worn cowling latch. Nevertheless, as a result of the incident, defendant summarily discharged plaintiff. Defendant's stated reason was that plaintiff violated company policy with respect to safety in failing to conduct a preflight inspection and certain specified "walk around procedures." According to defendant, had plaintiff done so, he would have noticed the unlatched or defective cowling.

Defendant moves for summary judgment on the basis that Pennsylvania does not recognize a cause of action for wrongful discharge of an at-will employee. In opposition, plaintiff first asserts that Utah law should apply, not Pennsylvania law. In the

alternate, he contends that should Pennsylvania law apply, there exist genuine issues of material fact which preclude defendant's motion.

II. STANDARD OF REVIEW

Summary judgment is proper when the pleadings and evidence on file show that "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. Rule 56(c). A "material fact" is one whose resolution will affect the ultimate determination of the case. S.E.C. v. Seaboard Corp., 677 F.2d 1289, 1293 (9th Cir. 1982).

To demonstrate entitlement to summary judgment, the defendant, as the moving party, is not required to refute the essential elements of the plaintiff's case. The defendant need only point out the insufficiency of the plaintiff's evidence offered in support of those essential elements. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986); Houser v. Fox Theatres Management Corp., 845 F.2d 1225, 1229 (3d Cir. 1988). Once that burden has been met, the plaintiff must identify affirmative evidence of record which supports each essential element of his cause of action. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

Therefore, in order to defeat a properly supported motion for summary judgment, a plaintiff can not merely restate the allegations of his complaint, Farmer v. Carlson, 685 F. Supp. 1335 (M.D. Pa. 1988), nor can he rely on self-serving conclusions unsupported by specific facts in the record. Plaintiff must point

to concrete evidence in the record which supports each essential element of his case. Celotex, 477 U.S. at 322-23. If the plaintiff fails to provide such evidence, then he is not entitled to a trial and defendant is entitled to summary judgment as a matter of law.

With these concepts in mind, the Court turns to the merits of defendant's motion.

III. DISCUSSION

A. Choice of Law

A federal court sitting in diversity must apply the choice of law rules of the forum state in determining which state's law to apply to the substantive issues before it. Klaxon Co. v. Stentor Electric Manufacturing Co., 313 U.S. 487 (1941); Blakesley v. Wolford, 789 F.2d 236, 238 (3d Cir. 1986). As this action is brought in the United States District Court for the Western District of Pennsylvania, Pennsylvania's choice of law rules apply to this personal injury action.

In determining which state's law should be applied in a given case, Pennsylvania courts require an analysis of the policies and interests underlying the case as set forth in the Restatement (Second) view, commonly known as the most significant relationship test, Griffith v. United Airlines, Inc., 203 A.2d 796 805 (Pa. 1964), which considers the following contacts:

(a) the place where the injury occurred;

(b) the place where the conduct causing the injury occurred;

(c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and

(d) the place where the relationship, if any, between the parties is centered.

Additionally, in a breach of contract case, section 188 of the Restatement (Second) Conflict of Laws directs a court to examine the following factors: 1) the place of contracting; 2) the place of negotiation of the contract; 3) the place of performance of the contract; 4) the location of the subject matter of the contract; and 5) the domicile, residence, place of incorporation, or place of business of the parties.

In summary, to determine which state's law governs, it is not simply a question of counting the number of contacts each of the competing states have, but the court must weigh the contacts on a qualitative scale according to their relation to the policies and interests underlying the issues in question. Melville v. American Home Assurance Co., 584 F.2d 1306 (3d Cir. 1978). See also Cipolla v. Shaposka, 267 A.2d 854 (Pa. 1970).

Taking all these factors into account, we conclude that Pennsylvania law applies to this case. We accept plaintiff's averment that the employment relationship was negotiated and formed

in Utah, the site of defendant's home office. But, even though the employment relationship was formed in Utah, it was contemplated by the parties that plaintiff would actually be employed in Pennsylvania. Clearly, Pennsylvania has as much interest in regulating the rights and obligations of citizens employed here, as Utah has in regulating the rights and obligations of its employers located there. Thus, we do not consider the place when the contract of employment was formed as significant.

Of greater weight, however, is that plaintiff was employed in Pennsylvania and the events which gave rise to this lawsuit took place in Pennsylvania. Moreover, after his discharge, plaintiff sought and received unemployment compensation benefits under Pennsylvania's Unemployment Compensation Law. 43 P.S. § 751 et seq. In this latter regard, it is somewhat incongruous for plaintiff to receive the benefit of Pennsylvania law arising out of the severed employment relationship, but contend that Utah law actually governed the parties' rights and obligations during the employment relationship itself.

We conclude that although Utah does have certain contacts in this matter, Pennsylvania's contacts are qualitatively superior and Pennsylvania law should govern the action.

B. Wrongful Discharge

In the absence of a contract of employment, either written or oral, which specifies a term of years, the employment relationship is presumed at will. Paul v. Lankenau Hospital, 569 A.2d 346 (Pa. 1990). As a general rule, in the absence of a specific statutory or contractual restriction, Pennsylvania does not recognize a cause of action for wrongful discharge of an at-will employee. Id. at 348. Nor has plaintiff alleged any facts which would support a finding that his discharge threatened clearly mandated public policy so as to come within the exception to the general rule. Geary v. United States Steel Corp., 319 A.2d 174 (Pa. 1974).

Plaintiff argues though that he is not an at-will employee. Plaintiff's position is based on the allegation that when he was hired, he was given verbal assurances by defendant that he could remain in his position so long as he performed his job in a satisfactory manner. This may or may not be so; yet, the Pennsylvania courts have consistently held that such generalized assurances are insufficient to rebut the presumption of at-will employment. See Murray v. Commercial Union Ins. Co., 782 F.2d 432, 435 (3d Cir. 1986) (citing authorities).

Plaintiff also contends that the claim is actionable because defendant discharged him with a specific intent to harm. That theory of recovery holds, in substance, that public policy is violated if an employer discharges an at-will employee for the

specific intent of harming that employee. However, Pennsylvania has expressly rejected the specific intent to harm theory. See Yetter v. Ward Trucking Corp., 585 A.2d 1022 (Pa. Super.), appeal denied, 600 A.2d 539 (Pa. 1991); McWilliams v. AT&T Information Systems, Inc., 728 F. Supp. 1186 (W.D. Pa. 1990).

Finally, plaintiff argues that he should be permitted to maintain the action because the at-will presumption can be defeated by establishing that the employee gave his employer additional consideration other than the services for which he was hired. Plaintiff's argument finds some support in Pennsylvania law. In Darlington v. General Electric, 504 A.2d 306 (Pa. Super. 1986), the Superior Court of Pennsylvania explained that the additional consideration contemplated by the rule is not simply that which normally attends an employee's decision to forego one job opportunity for another. Rather, it is such sufficient additional consideration that would indicate that the employee came to the employment relationship with bargaining strength greater than that of the usual employee. The court cited as the classic example where a new employee's additional consideration was the sale of the employee's business to the employer. Under those circumstances, such evidence would indicate that the parties contemplated something more than an at-will employment relationship.

Additionally, if the circumstances are such that a termination of the relationship by one party will result in a great hardship or loss to the other---as was known at the time the contract was made---this is a factor of great weight in showing that the parties contemplated other than an at-will relationship. Accordingly, in Cashdollar v. Mercy Hospital, 595 A.2d 70 (Pa. Super. 1991), the plaintiff accepted an offer of an administrative position at Mercy Hospital in Pittsburgh, Pennsylvania. In doing so, he resigned a similar position in Virginia. He also sold his Virginia home and moved his family to Pittsburgh. Yet, after only sixteen working days he was abruptly discharged. The Court held that, because discharge would constitute such a substantial hardship under the circumstances, there was an issue of fact over whether the parties had anticipated an at-will relationship.

No similar facts are presented here. Plaintiff has advanced no facts which would substantiate a finding that he brought any added consideration to the job beyond his skill and a willingness to work. Nor is there evidence that plaintiff's discharge constituted any substantial hardship beyond that which normally attends a dismissal.

III. CONCLUSION

Upon review of the record as a whole, we conclude that there is no issue of material fact and as a matter of law, plaintiff's status was one of an employee at-will. As such, he cannot maintain this action in wrongful discharge and the defendant's motion for summary judgment should be granted.

United States Magistrate Judge

Dated: June 11, 1992

cc: All Counsel of Record

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